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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,006	08/22/2003	Betsie Marshall Davis Brooks Rakoczy	RD37/01	1444

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EXAMINER

SMITH, KIMBERLY S

ART UNIT PAPER NUMBER

3644

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/647,006	Applicant(s) RAKOCZY, BETSIE MARSHALL DAVIS BROOKS	
	Examiner Kimberly S. Smith	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
 4a) Of the above claim(s) 1,3-6 and 8-14 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 2,7 and 15 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species V in the reply filed on 06/15/05 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 1, 3-6, 8 and 9-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 06/15/05. It is noted that the Applicant listed claims 1, 9-12 and 14 as readable upon the elected species. However, Claim 1 includes the limitation of the support member having a cylindrical aperture that is not readable upon the elected species. With regards to claims 9-12 and 14, claim 9 requires the limitation that the bottle retaining member is positioned beneath at least a portion of the first end of the bottle. As the first end of the bottle is claimed as the screwably coupled dispensing apparatus, it is clearly seen in Figures 11 and 12 that the bottle-retaining member is above the first end of the bottle. Claim 15 was not included in the listing of claims readable upon the elected species, however, as Figures 11 and 12 clearly show the resting plate is adjustable, claim 15 has been examined on the merits.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Greene, US Patent 4,463,859.

Green discloses a support system stand comprising a support base (26) having a supplemental lower plate (28) and a vertical member (30), a bottle retaining brace including a horizontal resting plate (32) coupled to the vertical member of the support base, the bottle retaining brace having a horizontal support member (34) coupled to the vertical member of the support base at a position superior to the resting plate

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Greene, US Patent 4,463,859.

Greene discloses the invention substantially as claimed including the supplemental lower plate being horizontally oriented. However, Greene discloses the supplemental lower plate is elliptical and not rectangular. It would have been an obvious matter of design choice to use a rectangular supplemental lower plate instead of elliptical, since the applicant has not disclosed that the rectangular shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any shape supplemental lower plate

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(reference page 17 of Applicant's specification in which it is stated that variations in shape are deemed readily apparent and obvious to one skilled in the art).

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Greene, US Patent 4,463,859 as applied to claim 2 above, and further in view of O'Donnell, US Patent 44,447.

Greene discloses the invention substantially as claimed. However, Greene does not disclose the resting plate is adjustably coupled to the vertical member. O'Donnell teaches within the same field of endeavor the use of resting plates adjustably coupled to a vertical member in order to configure the stand to varying sizes dependent upon the use desired. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the adjustable resting plate as taught by O'Donnell with the device of Green in order to provide for a stand which can be configured to bottles of differing sizes. Further, it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Casey (US 5,975,470), Emsley (US 1,624,830), Valentine et al. (Des. 364,943).

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly S Smith
Examiner
Art Unit 3644



TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER

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